



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

February 2, 2005

Ms. Darlene Woodson Smith
Assistant District Attorney
Dallas County
411 Elm Street, Suite 500
Dallas, Texas 75202

OR2005-00986

Dear Ms. Smith:

You ask whether certain information is subject to required public disclosure under the Public Information Act ("Act"), chapter 552 of the Government Code. Your request was assigned ID# 218139.

Dallas County (the "county") received three requests for the proposals submitted by six specified vendors in response to RFP No. 2004-140-1566. You state that you have released information pertaining to two of the specified vendors.¹ You claim that the remaining requested information may be excepted from disclosure under section 552.110, but make no arguments and take no position as to whether the information is so excepted from disclosure. Further, you state that the request may implicate third party privacy or proprietary interests. Accordingly, you indicate and provide documentation showing that you notified four interested third parties of the request pursuant to section 552.305 of the Government Code and of each party's right to submit arguments explaining why the information concerning it should not be released.² See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); see

¹ You inform us that Remit Plus Software, Inc. and Creditron Corporation have notified the county that they do not object to the release of their responses to RFP No. 2004-140-1566.

² The third parties that received notice pursuant to section 552.305 are the following: Fairfax Imaging ("Fairfax"); Wausau Financial Systems ("Wausau"); Carreker Corp. ("Carreker"); and RT Lawrence Corp. ("RT Lawrence").

also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have reviewed the submitted information.

As a preliminary matter, we note that this office previously issued Open Records Letter No. 2005-00141 (2005) in response to two of the requests for a decision concerning some of the same information at issue in the current request. In that ruling, we concluded that some of the submitted information was excepted from disclosure pursuant to section 552.110, and some of the information was required to be released. You do not inform this office that the relevant facts and circumstances have changed since the issuance of the prior ruling. Accordingly, we determine the county must continue to follow Open Records Letter No. 2005-00141 as a previous determination with respect to the requested information regarding Wausau, Carreker, and RT Lawrence. See Open Records Decision No. 673 (2001) (governmental body may rely on previous determination when 1) records or information at issue are precisely same records or information previously submitted to this office pursuant to section 552.301(e)(1)(D); 2) governmental body which received request for records or information is same governmental body that previously requested and received ruling from attorney general; 3) prior ruling concluded that precise records or information are or are not excepted from disclosure under Act; and 4) law, facts, and circumstances on which prior ruling was based have not changed since issuance of ruling).

We next note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why requested information relating to that party should be withheld from disclosure. See Gov't Code § 552.305(d)(2)(B). As of the date of this letter, Fairfax has not submitted comments to this office in response to the section 552.305 notice. Therefore, Fairfax has provided us with no basis to conclude that it has a protected proprietary interest in any of the submitted information. See Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 639 at 4 (1996), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Thus, the submitted information pertaining to Fairfax may not be withheld from disclosure under section 552.110 of the Government Code.

We note, however, that the submitted records contain information that is subject to section 552.136 of the Government Code. Section 552.136 provides in relevant part:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or

instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

- (1) obtain money, goods, services, or another thing of value; or
- (2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136. You must withhold the information we have marked pursuant to section 552.136.

Finally, we note that a portion of the submitted information may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

In summary: (1) to the extent the information at issue in the present request is identical to the information addressed in Open Records Letter No. 2005-00141, the county must continue to follow that ruling as a previous determination with respect to such information; (2) we have marked account and insurance policy numbers that must be withheld pursuant to section 552.136; (3) the county must release the remaining information; and (4) in releasing information that is protected by copyright, the county must comply with copyright law.

You also ask this office to issue a previous determination for all requests for vendor responses to RFP 2004-140-1566. We decline to issue such a previous determination at this time. Therefore, this letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/seg

Ref: ID# 218139

Enc. Submitted documents

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